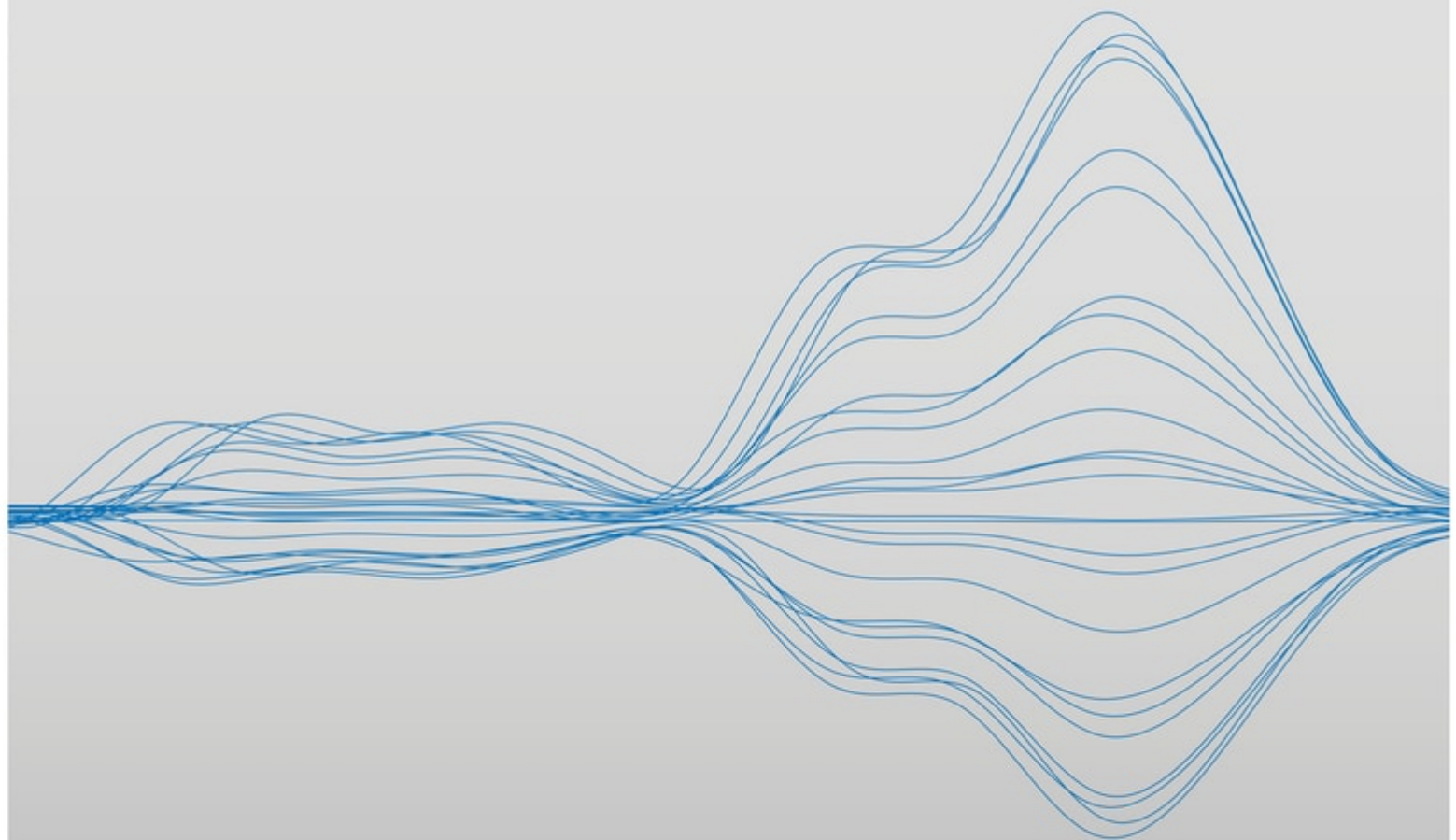


NETHERLANDS

Telehealth around the world: a global guide



Introduction

The COVID-19 pandemic has caused healthcare systems around the globe to rapidly, and in some cases, radically rethink the delivery of medical care. The global expansion of telehealth services is one way we have seen this transformation occur. This has resulted in significant opportunities in the field, as well as unprecedented regulatory change.

As a quickly evolving area, 'telehealth' can have different meanings in different contexts. In this Global Guide, telehealth refers to the delivery of healthcare services where patients and providers are separated by distance, using information and communications technology for the exchange of information for the diagnosis or treatment of diseases and injuries. We have adapted this definition from the World Health Organisation's definition of telehealth.

Telehealth is not a new concept – healthcare providers, academics and technology developers have been advocating for its use for decades. There are many benefits to the widespread adoption of telehealth, including improved access to healthcare services, risk mitigation, convenience and flexibility, and in many cases, a reduction in overhead costs. However, the use of telehealth is not without its challenges. For example, it is not suited to all forms of healthcare, its implementation and adoption can be time consuming and costly, and additional care must be taken in relation to the transfer of patient health information.

The restrictions of movement in many parts of the world due to COVID-19 has caused governments to recognise the potential of telehealth, and amend laws and regulations seemingly overnight to enable healthcare providers to deploy telehealth solutions. Many governments have adopted telehealth reforms in a matter of weeks, which may otherwise have taken years to be considered and introduced.

Although many of these reforms presently have an expiration date (dependent on the duration of the COVID-19 pandemic), there is likely to be continued growth in telehealth due to the advantages of such a service – even after the pandemic. There are enormous opportunities in the telehealth space for businesses already operating in this field, businesses considering expanding into telehealth, and start-ups.

This Global Guide provides an overview of the current state of telehealth regulations worldwide and assists readers to identify the opportunities, challenges and risks, on a country-by-country basis. As the field of telehealth, and the regulations underpinning it, remain highly dynamic and subject to change, this document is intended as a general guide and does not constitute legal advice. Should you wish to discuss any aspects of telehealth with a specialist lawyer, please contact us below.

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Netherlands

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Is the use of telehealth permitted?

Yes, telehealth is permitted in the Netherlands and use thereof has increased considerably as a result of the COVID-19 pandemic. Even more so, telehealth (also called E-health in the Netherlands) is part of a stimulus package (Stimuleringsregeling E-Health Thuis) by the Dutch Government in order to stimulate innovations in healthcare, particularly as it is believed that E-health can make healthcare more efficient and cost effective. The stimulus package of 2021 was reopened in 2022. It is not yet clear whether it will be reopened in 2023 again.

How is telehealth regulated?

There are no specific regulations regarding telehealth, but an array of regulations which healthcare should be compliant with, such as the qualification criteria of the HCP, the informed consent of, and agreement with the patient, and data protection.

This includes among others the Healthcare Quality, Complaints and Disputes Act (in Dutch: Wet kwaliteit klachten en geschillen in de zorg (Wkkgz)). Further, the Health and Youth Care Inspectorate, who supervises healthcare and youth care services in the Netherlands, created frameworks for telehealth. These frameworks set out the relevant standards and criteria based on applicable laws and regulations. This concerns for example the “Inzet van e-health door zorgaanbieders” and “Telemonitoring van volwassenen thuis” (only available in Dutch).

Are there specific fields of healthcare in relation to which telehealth services are currently available, and do they involve the use of proprietary technology or platforms?

There is a plethora of applications of telehealth that is possible. The government itself provides the following examples:

- Geo tracking of mentally ill patients;
- Lifestyle monitoring;
- Teleconferencing consultations (for all kinds of fields such as general practitioners and dentists);
- Medication dispensers;
- E-mental health; and
- Social robotics.

Some functions require proprietary platforms tailored to the specific needs of the situation. For other more general consultations, general videoconferencing apps are used at the choice of the HCP, bearing in mind confidentiality restrictions.

The Dutch Government has introduced so-called “Health Deals”, which are cooperations between the government and third parties to innovate healthcare. This deal does not entail any funding by the government, but allows the government to share knowledge, help

bringing parties together and ensure good partnerships.

Does the public health system include telehealth services, and if so, are such services free of charge, subsidised or reimbursed? Where the public health system does not include telehealth services, are such services covered by private health insurance?

The reimbursement of telehealth services is not dependent on the physical or digital nature of the services. More so, certain health services and therapies are reimbursed through the obligatory basic health insurance package. If the patient has additional private insurance, additional health services may be reimbursed as well. A health service or therapy that would be reimbursed if it were face-to-face will also be reimbursed if the meeting is now digital. There are no specific exclusions that we are aware of.

Do specific privacy and/or data protection laws apply to the provision of telehealth services?

As the provision of telehealth services entail the processing of personal data, such processing should comply with the General Data Protection Regulation and the Dutch GDPR Implementation Act (Uitvoeringswet AVG). In addition, the Dutch Telecommunications Act (Telecommunicatiewet) could be applicable to the use of telecommunication services, depending on how the telehealth services are carried out exactly.

Wet aanvullende bepalingen gegevensverwerking in de zorg (Wabvvpz) (English: Processing of Personal Data in Healthcare (Additional Provisions) Act). This law has been in force since 2020 and regulates the preconditions for use of an electronic data exchange for healthcare providers. It also clarifies which additional rights and guarantees a client/patient has in relation to personal data exchanged via such electronic data exchange system.

How should the cross-border transfer of personal information collected and processed in the course of telehealth services be carried out to ensure compliance with applicable privacy laws?

For any cross-border transfers of telehealth data, additional safeguards should be in place on the basis of Chapter V of the GDPR, also taking into account any additional requirements resulting from the recent Schrems II-judgment by the European Court of Justice.

Are there any currently applicable codes of conduct on the use of telehealth systems and/or security of telehealth data in your jurisdiction?

On a EU-wide level, the Code of Practice for Telehealth Services in Europe has been launched, which provides a benchmark standard against which telehealth service providers could be accredited.

The EU-wide NIS2 Directive imposes stricter cyber security requirements across sectors that are vital for our economy and society and that rely heavily on ICT, such as healthcare. Operators of essential services in the vital sectors will have to take appropriate security measures and notify relevant national authorities of serious incidents.

Are any specific laws, regulations, or self-regulatory instruments expected to be adopted in the near future?

In September 2022 a bill on the digital data exchange in healthcare was adopted (Wet Elektronische Gegevensuitwisseling in de Zorg (Wegiz)). The proposed Wegiz aims at achieving full interoperability in the electronic exchange of data between healthcare providers. It is a 'framework act' that makes it possible for the government to designate, by general administrative measures, data exchanges that must take place electronically.

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